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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928 29

No. ~~794~~ 57

THE UNITED STATES OF AMERICA

vs.

KITTY JACKSON, HILDA J. FOSTER, AND HILDA J. FOSTER, AS ADMINISTRATRIX OF THE ESTATE OF JACK JACKSON, ETC.

FILED MARCH 28, 1929

1743

(34,103)

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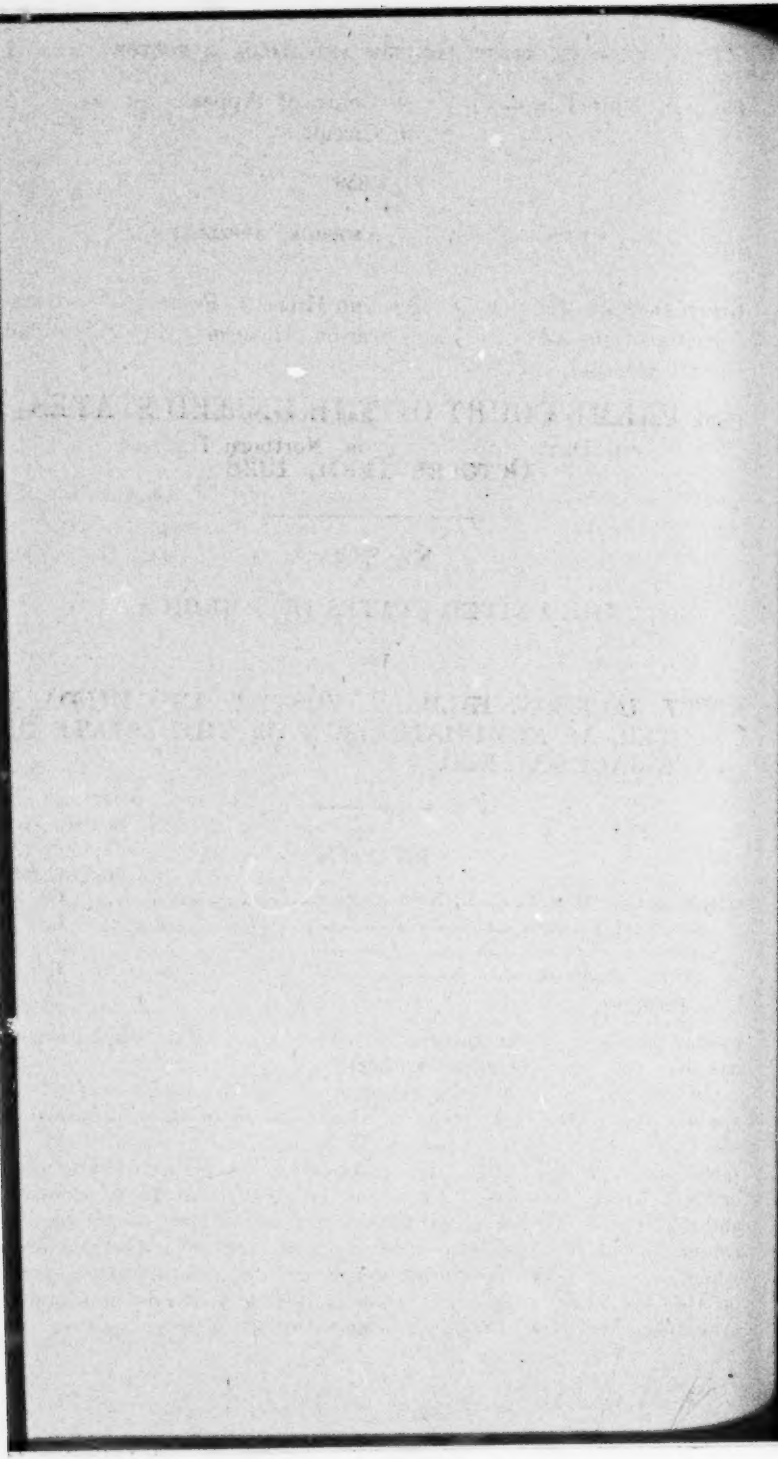

1 In United States Circuit Court of Appeals for the Ninth Circuit

No. 5659

UNITED STATES OF AMERICA, APPELLANT,

vs.

KITTY JACKSON, HILDA J. FOSTER AND HILDA J. FOSTER, AS ADMINISTRATRIX of the estate of Jack Jackson, sometimes called Trinidad Jack, deceased, appellees.

Upon Appeal from the United States District Court for the Northern District of California, Northern Division.

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit certifying questions of law to the Supreme Court of the United States under section 239 of the Judicial Code, filed Mar. 21, 1929.

Statement of Case

The United States on behalf of Bob Roberts, a tribal Indian, brought a suit in the district court of the United States for the northern district of California to quiet title to certain lands which had been conveyed by a trust patent issued on December 11, 1891, to Jack Williams, an Indian, in accordance with the act of July 4, 1884. (43 U. S. C. A., sec. 190.) The trust period of the
2 patent would have terminated December 11, 1916, but the patentee died on January 24, 1916, and the land passed to Nellie Williams, an Indian, his widow and sole heir. On March 18, 1921, Nellie Williams conveyed the land to Jack Jackson, an Indian, and the deed was recorded November 3, 1922. That conveyance was not and never has been approved by the Secretary of the Interior. On October 10, 1922, Nellie Williams died leaving a will by which she devised the land to Bob Roberts. Her will and devise were approved by the Secretary of the Interior on December 1, 1923. Jack Jackson has since died and the appellees herein are his heirs.

On the trial in the court below it was shown on behalf of the appellant that the restriction on alienation originally contained in the trust patent issued to Jack Williams, which would have expired in December, 1916, was extended by a series of Executive orders making one year extensions from 1916 to 1919, inclusive, and a further twenty-five year extension made in 1920, and it was the contention of the appellant that the conveyance to Jack Jackson, which was made during the existence of a restriction thus imposed on the alienation, was void; that Indian homesteads and Indian allotments are in all essential respects upon the same footing, and

that 25 U. S. C. A., sec. 391, affords authority for the extension of the trust period in homestead patents issued to Indians under the Indian homestead act of July 4, 1884, as decided in the case of Tom Weaxta, 47 L. D. 574. The court below, following the decision in Seaples v. Card, 246 Fed. 501, held that the Secretary of the Interior was without authority to extend the period of restriction imposed by the original patent to Jack Williams and that Jack Wil-
3 liams was not an allottee within the meaning of the act of June 21, 1906 (25 U. S. C. A., sec. 391).

Questions certified

The judges of the United States Circuit Court of Appeals for the Ninth Circuit being in doubt, hereby certify to the Supreme Court of the United States the questions of law decisive of the above entitled case now pending before it on the appeal.

1. Could the trust period and the restriction of alienation in an Indian homestead patent issued under the act of July 4, 1884 (43 U. S. C. A., sec. 190), be extended by Executive orders?

2. Did the act of June 21, 1906 (25 U. S. C. A., sec. 391), authorize the President in his discretion to continue restrictions on alienation in patents issued under the Indian homestead act of July 4, 1884? (43 U. S. C. A., sec. 190.)

WILLIAM B. GILBERT,
FRANK H. RUDKIN,
FRANK S. DIETRICH,
United States Circuit Judges for the Ninth Circuit.

A true copy.
Attest: March 21, 1929.
[SEAL.] PAUL P. O'BRIEN, *Clerk.*
[File indorsement omitted.]
[Indorsed on cover:] File No. 34103. United States Circuit Court of Appeals, Ninth Circuit. Term No. 794. The United States of America vs. Kitty Jackson, Hilda J. Foster, and Hilda J. Foster, as Administratrix of the Estate of Jack Jackson, etc. (Certificate.) Filed March 28th, 1929. File No. 34103.

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